

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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AUG 22 1994

GC Docket No. 92-52

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of:)
)
Reexamination of the Policy)
Statement on Comparative)
Broadcast Hearings)

RM-7739

RM-7740

RM-7741

To: The Commission

REPLY COMMENTS

Barbara D. Marmet ("Marmet"), permittee of WAFY(FM), 103.1 MHz, Middletown, Maryland, by her attorney, submits the following reply comments in the above-referenced rulemaking proceeding.¹ In support, the following is shown:

1. On August 8, 1994, Jerome Thomas Lamprecht ("Lamprecht") made a filing in this proceeding which he denominated as "Reply Comments". However, the content of Lamprecht's filing was in the nature of original comments.

2. Lamprecht erroneously claims that the FCC granted Marmet's application "on the basis of its gender preference policy." (Lamprecht comments, Para. 1, p. 1). The Commission found Marmet superior to

¹ The Commission extended until August 22, 1994, the time for filing reply comments. Order, DA 94-836 (Released August 1, 1994).

Lamprecht because of her local residency and community activities, as well as because of her auxiliary power proposal. The Commission initially enhanced Marmet's clear preference over Lamprecht because of her gender. But that clear preference without regard for gender remained when the Commission later disregarded gender. In 1986 Marmet had asked the Commission to decide the case without regard to the female preference. However, ironically, Lamprecht expressly opposed that request.

3. Lamprecht asserts that "Under Bechtel, it is arbitrary and capricious for the Commission to give dispositive preference to applications on the ground that owners will operate the station" and that "favoritism for local owners is simply an anachronism that serves little purpose" (Lamprecht comments, Para. 2, pp. 2-3). Lamprecht exhorts the Commission to "abandon the notion that the listening public can best be served by 'owner-operators'." (Lamprecht comments, Conclusion, p. 4). Thus, Lamprecht seems to suggest that he would operate his proposed Middletown, Maryland station as an absentee owner, and would no longer honor his prior commitment (made prior to Bechtel) to move to Middletown and serve as full-time General Manager.

4. The Bechtel Court never held that local residence was irrelevant or should receive no weight, as Lamprecht claims. (Lamprecht comments, Para. 2, pp.

2-3). That Court certainly never held that "this factor should get no weight at all." (Lamprecht comments, Para. 2, p. 2). As Marmet has maintained throughout, Bechtel compels the Commission to fully consider all proposals by applicants as to how they would best serve the public interest. Failure to do so would violate an applicant's Ashbacker rights. Local residence has long been considered by the Commission -- even prior to the 1965 Policy Statement -- as a factor in determining how the public interest would best be served. There is no reason to abandon it now.

5. Lamprecht further asserts that the Commission should "give appropriate weight to broadcast experience" and apply procedures that "take proper account of broadcast experience" (Lamprecht comments, Paras. 3 and 4, p. 3). However, notwithstanding the importance Lamprecht places on broadcast experience, Lamprecht, curiously and without explanation, would deny Marmet credit for the broadcast experience acquired since she initiated construction of WAFY and commenced broadcasting. The FCC issued a construction permit to Marmet, which directed her to construct WAFY. Lamprecht did not object to this action. Lamprecht did not request a stay of the Commission action. The public interest has obviously been served by the operation of WAFY over the past four years. Lamprecht

now seeks to elevate his private interests over the public's, without any explanation why one party should be treated differently from the other.

6. Moreover, in his concluding remarks about the role of broadcast experience, Lamprecht contends that "the point of the licensing procedure is to see who is most likely to run a successful operation". This is NOT the point of the licensing procedure. The Commission has no interest in "successful" -- profitable or highly rated -- operations. The Commission's statutory mandate under Section 309(a) of the Communications Act is to determine which applicant would best serve the "public interest, convenience and necessity", by a grant of its application, and not which would be most "successful". Lamprecht fails to understand this basic point, notwithstanding his "struggling for over ten years" to become a Commission licensee. (Lamprecht comments, Para. 1, p. 1).

7. While Lamprecht appears to object to a showing of Marmet's broadcast experience at WAFY in successfully serving the public since 1988, Lamprecht does not state any objection to up-dating a stale record in all other respects. Lamprecht simply wants to elevate broadcast experience to an all important, controlling, decisional level, and to disregard all

other relevant factors. Adopting Lamprecht's revolutionary viewpoint would preclude newcomers from bringing a new voice and a new perspective to the market. It would, for example, again preclude Susan Bechtel from being able to make a case as to how she believes she would best serve the public interest. Lamprecht's viewpoint would constitute impermissible discrimination against an entire class of applicants, in disregard for the Commission's statutory mandate to select the applicant who would best serve the "public interest, convenience and necessity."

Respectfully Submitted,

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August 22, 1994

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CERTIFICATE OF SERVICE

I, Harold K. McCombs, Jr., do hereby certify that I have caused to be served by mail, First Class postage prepaid, this 22nd day of August, 1994, copies of the foregoing "Reply Comments" to the persons on the attached list.

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